

TENNESSEE BOARD OF CHIROPRACTIC EXAMINERS

MINUTES

DATE: February 3, 2004

LOCATION: Tennessee Room
Ground Floor, Cordell Hull Building
Nashville, TN

BOARD MEMBERS

PRESENT: Barry Kelton, D.C., Chair
Debe Williams, D.C.
Dominique Tomasino, D.C.
Andrea Selby, D.C.
Christine Moody

BOARD MEMBERS

ABSENT: Robert Pannell, D.C.
Linda Kendrick

STAFF PRESENT: Sherry Owens, Board Administrator
Robert Kraemer, Advisory Attorney
Barbara Maxwell, Administrative Director

Dr. Kelton, chair, called the board meeting to order at 8:32 a.m., February 3, 2004. A sufficient number of board members were present to constitute a quorum.

Review and Approve Minutes

Upon review of the November 5, 2003 minutes, Dr. Williams made a motion, seconded by Dr. Selby, to approve the minutes as written. The motion carried.

Review Administrative Report

Ms. Owens reviewed the administrative report and reported there were 844 active chiropractic examiners, 104 active chiropractic x-ray technicians and 359 active chiropractic therapy assistants.

Ms. Owens stated the application turnaround times were 36.1 days for chiropractic examiners, 254 days for chiropractic x-ray technicians and 217 days for chiropractic therapy assistants.

Ms. Owens said the turnaround time for chiropractic x-ray technicians and chiropractic therapy assistants were slightly higher due to the internship period.

Ms. Owens said between October 2003 and January 2004 9 chiropractic examiners, zero (0) chiropractic x-ray technicians and two (2) chiropractic therapy assistants renewed their licenses on line. Ms. Owens asked the board to encourage their colleagues to renew or retire licenses and change addresses on the internet.

Ms. Owens said the new toll free number for Health Related Board's is 1/800-778-4123.

Review Investigative Report

Ms. Phelps stated she was the new Disciplinary Coordinator and would be monitoring the compliance of disciplined licensees with the terms of probation. Ms. Phelps stated if a licensee was not in compliance a new complaint would be filed.

Ms. Phelps said she was asked to review the investigative report in Ms. Moran's absence. Ms. Phelps stated there were twenty-five (25) complaints against Chiropractors in 2003, nineteen (19) were closed with no action, three (3) were referred to the Office of General Counsel (OGC) and five (5) closed pending court action.

Mr. Phelps said one (1) complaint was received against a chiropractic therapy assistant for unlicensed practice and that no complaints were received against chiropractic x-ray therapists.

Review Disciplinary Report

Ms. Phelps said there was one disciplinary action against Dr. James Brown, who has completed his substance abuse program, submitted month drug screenings and paid his civil penalty.

Ms. Phelps reviewed the disciplinary action history for chiropractic examiners and chiropractic x-ray technicians.

Review Continuing Education

The board reviewed requests from the following to conduct continuing education courses in Tennessee:

North Carolina Chiropractic Association
100 hour basic applied Kinesiology

North Carolina Chiropractic Association
There has never been a better time to be a chiropractor program and the triune of chiropractic success

University of Bridgeport
Laboratory assessment and nutritional management

Wright Therapy
Electric stimulation therapy

SeaSilver USA, Inc.
Nutrition and health

Upon review, Dr. Williams made a motion, seconded by Dr. Selby, to approve the continuing education courses offered by the North Carolina Chiropractic Association and the University of Bridgeport and to deny the courses offered by Wright Therapy and SeaSilver USA, Inc. Dr. Tomasino opposed. The motion carried.

Ratify New Licensees

Upon review of the newly licensed chiropractors, Dr. Kelton stated he interviewed Dr. Shawn Jones on January 15, 2004 and requested that he be added to the list of newly licensed chiropractic examiners.

Dr. Williams made a motion, seconded by Dr. Selby, to ratify the following list of newly licensed chiropractic examiners, chiropractic therapy assistants and chiropractic x-ray technicians:

Chiropractors

Richard S. Cheshier
Samuel K. Clark
Paul C. Crow
Frank J. Cuozzo
Todd B. Dobson
David R. Frost
Roger L. Garrett, Jr.
Matthew C. Hayden
Shamsu K. Raheem
Matthew B. Rorie
Arthur W. Stewart
Phong Truong
Michele S. Whitman

Chiropractic Therapy Assistants

Alison N. Campbell
Penny E. Campbell
Mary F. Champion
Tabitha J. Crippen
Tamara B. Harrell
Connie M. Harris
Heather N. Hershman
Karen D. Jones
Celinta M. Marable
Carol A. McElya
Cynthia L. Morris

Emily M. Payne
Helen M. Ramos
Sherry D. Spicer-Dudley

Chiropractic X-Ray Assistants

Melissa A. Thompson

The motion carried.

Review Status Report

Ms. Owens reviewed the status report with the board, which gives the number of applications in process, expired applications in addition to the number of voluntarily retired, failed to renew and deceased licensees.

Report from Robert Kramer, Advisory Attorney

Mr. Kraemer reviewed the Conflict of Interest statement informing the members this includes sitting in on a case where you feel you could be biased against the complainant or the state.

Mr. Kraemer discussed the limited liability rules, CPA and CLLC re-write, continuing education, scope of practice 2003 legislation and disciplinary rules which will become effective year this. Mr. Kraemer said the board is to vote on the acupuncture rule today.

Report from Jerry Kosten, Rules Manager

Mr. Kosten discussed the rulemaking hearing held December 23, 2003 to amend rules, for all health related boards, pertaining to disciplinary actions, civil penalties, order modifications, settlements and screening panels. Mr. Kosten explained a respondent must provide proof of compliance, i.e., drug screenings, continuing education, supervision, etc. and appear before the Board before his/her license could be reinstated or taken off probation. Mr. Kosten said the Board is to vote to adopt the amendments.

Ms. Moody made a motion, seconded by Dr. Williams, to adopt the amendments as written. A roll call vote was conducted and all members voted in the affirmative.

Mr. Kosten stated that 2003 legislation removed the prohibition on acupuncture and the chiropractic acupuncture rule went to rulemaking January 23, 2004. Mr. Kosten said four licensed practitioners, Dr. Barnett, Dr. Reynolds, Dr. Kesner and Dr. Frazier attended the rulemaking hearing and are in the audience today. Mr. Kosten stated the rulemaking hearing also consisted of rule amendments to amend an incorrect reference to the continuing education rules and delete language regarding the assessment of disciplinary costs. Mr. Kosten stated the four practitioners who attended the rulemaking suggested that it was not appropriate to use the phrase chiropractic acupuncture and suggested the board to use the work acupuncture.

Mr. Kosten said it was the board's job is to determine whether or not to agree with the changes and his and Mr. Kraemer's job is to determine if the changes are legal.

Dr. Barnett addressed the board and stated she was representing colleagues who were considering the practice of acupuncture. Dr. Kesner said they were not setting precedence but were following through on what twenty-five other states have done when treating patients with acupuncture.

Dr. Williams said the board is friendly towards colleagues who want to do acupuncture but were advised by the advisory attorney during a task force meeting to use the word chiropractic acupuncture. Dr. Williams stated the board must wait until the Attorney General makes a determination on whether or not the board must use the word chiropractic with acupuncture.

Upon discussion, Dr. Williams made a motion, seconded by Dr. Tomasino, to table this amendment until an opinion by the Attorney General is rendered as to whether the board can use the word chiropractic acupuncture and if chiropractic examiners can practice acupuncture. The motion carried.

New Applications

Ms. Owens discussed the new application and upgrade application she prepared for Chiropractors performing acupuncture. Upon review of the application and upgrade, Dr. Selby made a motion seconded by Dr. Williams, to accept the applications as written. The motion carried.

Appeal by Dr. Brown to practice Chiropractic in Tennessee

Dr. James Brown appeared before the board to request reinstatement of his license. Dr. Brown's license was suspended in December, 2002, for an addiction to Hydrocodone at which time he was required to pay a \$5000 civil penalty, seek treatment and comply with drug testing requirements.

Dr. Brown stated he has completed his treatment, is currently on methadone and has complied with the order.

The board asked Dr. Brown how long he would have to remain on methadone and if he could discontinue the use at any time. Dr. Brown stated there was no time period for him to be on methadone but upon commencing his practice he would start a slow detox period within a clinical setting which including counseling twice a month and random urine screenings. Dr. Brown said it has been proven that methadone does not affect one's overall performance and is safe with little or no side effects. Dr. Brown stated he had been trying to get on the agenda to come before the board for reinstatement of his license since May 2003.

Mr. Kraemer said according to the order the respondent must obtain and present to the board a favorable recommendation from Dr. Brown's psychiatrist, therapist, or counselor that he is emotionally and psychologically able to return to the active practice of chiropractic medicine.

Mr. Kraemer stated that Dr. Brown should have his attorney contact the Office of General Counsel (OGC) and request a modification of his previous order.

Upon discussion, Dr. Williams made a motion, seconded by Dr. Tomasino, to advise Dr. Brown to seek an attorney and go through the legal pathways to come before the board to request an order modification for reinstatement of his license. Dr. Tomasino seconded the motion.

Review Financial Report

Ms. Owens reviewed the Financial Report with the board and stated the new fee increases should put the board in the black next year.

Senate Bill 2111

Ms. Bell discussed Senate Bill 2111, which allows the board to promulgate rules to allow criminal background checks on applicants. Ms. Bell stated that OGC and the department strongly recommend background checks, which will be done at the initial application process. Ms. Bell said the applicant would contact the TBI and have the check send in as part of their application package. Ms. Bell said letters would be mailed to all board members regarding their opinion of background checks and let her know your opinion or thoughts on the issue. Ms. Bell said the commissioner believes this a good thing if you can identify a few bad practitioners.

Dr. Kelton and Dr. Tomasino stated they thought the background checks were an excellent idea.

Dr. Selby made a motion, seconded by Dr. Tomasino, to adopt the background check as part of the board's application package. The motion carried.

Continuing Education Waiver Requests

The board reviewed a letter from Cynthia Cannon, Chiropractic Therapy Assistant, requesting a waiver of her 2002 continuing education requirements due to availability of courses. Upon review of Ms. Cannon's request, Dr. Selby made a motion, seconded by Dr. Williams, that Ms. Cannon's request for a waiver of her 2002 hours be denied on the basis that she did not avail herself to other continuing education course opportunities. The motion carried.

The board reviewed a letter from L. E. Baily, D.C. requesting a waiver of his 2004 continuing education requirements due to illness. Upon review of Dr. Baily's request, Dr. Williams made a motion, seconded by Dr. Tomasino to deny the request. The motion carried.

The board reviewed a letter from David F. Fair, D.C. requesting he be allowed to obtain his 2003 continuing education hours in 2004 due to financial hardships in 2003. Dr. Williams made a motion, seconded by Dr. Selby, to allow Dr. Fair to obtain his 2003 continuing education hours in 2004. The motion carried.

The board reviewed a letter from Patricia Kalish, Chiropractic Therapy Assistant, to be allowed to obtain her 2003 continuing education hours in 2004 due to illness. Dr. Williams made a motion, seconded by Dr. Selby, to allow Ms. Kalish to obtain her 2003 continuing education hours in 2004. The motion carried.

Other Board Business

Dr. Selby requested that an article be placed in the newsletter regarding the release of patient records and asked how much to charge for copies of patient x-rays.

Mr. Kraemer said there was a basic fee for a copy of the patient's records; however, nothing in the rules pertained to a copy of the actual x-ray.

Ms. Owens asked how long practitioners are to keep patient records. Mr. Kraemer said there isn't anything in the chiropractic rules or statutes that mandate how long patient records are to be kept and suggested practitioners consult their malpractice insurance carrier.

Dr. Kelton requested that it be noted in the minutes that the board recognize Dr. Williams and thank her for her expertise and diligence as the board president and board member for the last four years. All board members agreed and thanked Dr. Williams.

With no other board business to conduct Dr. Selby made a motion, seconded by Dr. Williams to adjourn. The motion carried and the meeting adjourned at 10:53 a.m.

SO/G3014134/BCEmin